

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**Priscilla Sterling, Raine Becker, Shawn
Miller, and John Bennett, individually and on
behalf of all others similarly situated
Plaintiffs**

v.

Civil No. 3:22-cv-531-KHJ-MTP

**The City of Jackson, Mississippi; Chokwe A.
Lumumba; Tony Yarber; Kishia Powell;
Robert Miller; Jerriot Smash; Siemens
Corporation; Siemens Industry, Inc.; and
Trilogy Engineering Services LLC**

Defendants

**TONY YARBER AND KISHIA POWELL’S MOTION FOR QUALIFIED IMMUNITY
AND JUDGMENT ON THE PLEADINGS TO DISMISS THE AMENDED CLASS
ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND MONEY DAMAGES**

Yarber and Powell, through counsel and pursuant to Federal Rule of Civil Procedure 12(c), file this Motion for Qualified Immunity and to Dismiss, seeking dismissal of Counts I, II, and V of Plaintiffs’ Class Action Complaint for Injunctive Relief and Money Damages with Jury Trial Demand [Doc. 57]. In support of the requested relief, Yarber and Powell state:

1. In the Amended Complaint, Plaintiffs assert three claims for relief against Yarber and Powell: (1) Count I: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – Bodily Integrity; (2) Count II: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – State Created Danger; and (3) Count III: Negligence. *See id.* at 77-81.

2. Each Count fails to state a claim upon which relief may be granted against Yarber or Powell.

3. Yarber and Powell are entitled to the protection afforded by the qualified-immunity defense.

4. Plaintiffs have not alleged state-actor coercion, and therefore, no violation of bodily integrity.

5. The Fifth Circuit does not recognize a state-created-danger theory of liability.

6. Plaintiffs have also failed to state a claim for negligence (Count V) against Yarber or Powell in his or her individual capacity, because both acted in the course and scope of their employment.

7. Accordingly, and for the reasons more fully set forth in their accompanying Memorandum in Support, Yarber and Powell request dismissal of Counts I, II and V against them.

8. In further support of the Motion, Yarber and Powell submit the following exhibits:

- Exhibit “A,” 2011 State-of-the-City Address;
- Exhibit “B,” Mar. 25, 2014 Minutes; and
- Exhibit “C,” Miss. Bd. of Licensure for Prof. Engineers Licensee Details.

RESPECTFULLY SUBMITTED, this the 14th day of July, 2023.

/s/ Terris C. Harris

TERRIS C. HARRIS

Terris C. Harris (MSB #99433)
THE COCHRAN FIRM-JACKSON, LLC
197 Charmant Place, Suite 2
Ridgeland, MS 39157
Telephone: (601) 790-7600
tharris@cochranfirm.com
*Counsel for Tony Yarber and
Kishia Powell*

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ Terris C. Harris
TERRIS C. HARRIS